

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

---

STATE OF ALABAMA, et al.,

Plaintiffs-Appellants,

v.

U.S. SECRETARY OF EDUCATION, et al.,

Defendants-Appellees.

---

On Appeal from the United States District Court  
for the Northern District of Alabama

---

**SUPPLEMENTAL BRIEF FOR APPELLEES**

---

BRETT A. SHUMATE

*Assistant Attorney General*

MELISSA N. PATTERSON

JACK E. STARCHER

DAVID L. PETERS

STEVEN A. MYERS

*Attorneys, Appellate Staff*

*Civil Division, Room 7232*

*U.S. Department of Justice*

*950 Pennsylvania Avenue NW*

*Washington, DC 20530*

*(202) 305-8648*

---

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

Pursuant to Eleventh Circuit Rule 26.1-1, counsel for Defendants-Appellees  
certify that the following have an interest in the outcome of this appeal:

Abrams, Floyd

Alabama, State of

Alaska, State of

American Civil Rights Project

Amunsun, Jessica Ring

Arkansas, State of

Attorney General's Office of South Carolina

Axon, Annemarie Carney

Bachus Brom & Taylor LLC

Bailey, Andrew

Barry, Kevin

Binnall, Jesse

Binnall Law Group

Bird, Brenna

Blasi, Vincent

Bollinger, Lee

Borden, Matthew

Boynton, Brian

Brown, Lisa

California, State of

Cardona, Miguel

Chandy, Sunu P.

Chemmerinsky, Erwin

Christian Educators Association International

Citizens Defending Freedom

Cohen, Tabitha P.

Coleman, Russell

Colorado, State of

Connecticut, State of

Consovoy McCarthy PLLC

Davy, Jim

DeClark, Kory

Delaware, State of

District of Columbia

Drummond, Gentner F.

Eichner, Maxine

Equality California

Eyer, Katie

Faer, Laura L.

Female Athletes United

Fitch, Lynn

Florida, State of

Flynn, Shawn M.

Formella, John M.

Generation Hope

Georgia, State of

Georgia Department of Law

Gitomer, Madeline

GLSEN

Griffin, Tim

Golden, Kaitlyn

Goldfarb, Jon C.

Hawaii, State of

Hilgers, Michael T.

Hill, Bridget

Idaho, State of

If/When/How: Lawyering for Reproductive Justice

Illinois, State of

Independent Women's Law Center

Independent Women's Network

Indiana, State of

Iowa, State of

Jackley, Marty J.

Justice + Joy National Collaborative

Kansas, State of

Kentucky, State of

Knudsen, Austin

Kobach, Kris W.

Kopplin, Rebecca

Labrador, Raul R.

LaCour, Jr., Edmund Gerard

Lakier, Genevieve

Lau, Holning

Louisiana, State of

Maine, State of

Marina, Anya

Martin, Emily

Marshall, Steve

Maryland, State of

Massachusetts, State of

Matheny, Justin L.

McKasson, Lindsay R.

McMahon, Linda

Michigan, State of

Miller, Edward A. R.

Minnesota, State of

Mississippi, State of

Missouri, State of

Miyares, Jason S.

Mommies in the D

Montana, State of

Morenoff, Dan

Morrissey, Patrick

Murrill, Liz

Myers, Steven A.

National Network to End Domestic Violence

National Nurse-Led Care Consortium

National Women's Law Center

Nebraska, State of

Nevada, State of

New Hampshire, State of

New Jersey, State of

New York, State of

Niles-Weed, Robert

Norris, Cameron Thomas

North, Benjamin F.

North Dakota, State of

Office of the Attorney General of Alabama

Office of the Attorney General of Florida

Ohio, State of

Oklahoma, State of

Oregon, State of

Parents Defending Education

Patel, Shiwali

Patterson, Melissa N.

Paxton, Ken

People for the American Way

Pennsylvania, State of

Peters, David L.

Petrany, Stephen J.

Planned Parenthood Federation of America

Public Counsel

Reyes, Sean D.

Rhode Island, State of

Riehl, Christina

Rokita, Theodore E.

Schoenbaum, Naomi

Shanor, Amanda

Shumate, Brett

SIECUS: Sex Ed for Social Change

Sisterreach TN & Sisterreach Illinois

Skrmetti, Jonathan

Soucek, Brian

South Carolina, State of

South Dakota, State of

Spate, Joseph D.

Speech First, Inc.



Starcher, Jack E.

Stewart, Scott G.

Stop Abusive and Violent Environments

Stone, Geoffrey

Taylor, Bryan McDaniel

Taylor, Treg

Tennessee, State of

Texas, State of

The Miller Firm

The Trevor Project

The Womxn Project

Theran, Elizabeth

Thompson, Natalie

Tom Homann LGBTQ+ Law Association

U.S. Breastfeeding Committee

U.S. Department of Education

U.S. Secretary of Education

Utah, State of

Vermont, State of

Virginia, State of

Washington, State of

Weinrib, Laura

West Virginia, State of

Widiss, Deborah

Wiggins Child Pantazis Fisher & Goldfarb

Women's Bar Association of the District of Columbia

Women's Law Project

Wrigley, Drew H.

Wyoming, State of

Yost, Dave

Young, Ezra Ishmael

## **TABLE OF CONTENTS**

INTRODUCTION .....	1
BACKGROUND.....	1
ARGUMENT .....	3
THE CASE IS NOT MOOT BECAUSE IT IS STILL POSSIBLE FOR THIS COURT TO GRANT EFFECTUAL RELIEF.....	3
CONCLUSION .....	4
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	

## TABLE OF AUTHORITIES

<b>Cases:</b>	<b><u>Page(s)</u></b>
<i>Carroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.</i> , No. 24-cv-00461, 2025 WL 1782572 (N.D. Tex. Feb. 19, 2025) .....	2
<i>Chafin v. Chafin</i> , 568 U.S. 165 (2013) .....	3
<i>Tennessee v. Cardona</i> , 762 F. Supp. 3d 615 (E.D. Ky. 2025), <i>as amended</i> (Jan. 10, 2025) .....	1
<b>Regulatory Material:</b>	
Exec. Order No. 14,201, <i>Keeping Men Out of Women’s Sports</i> , 90 Fed. Reg. 9279 (Feb. 11, 2025) .....	1
<b>Other Authorities:</b>	
<i>Nondiscrimination on the Basis of Sex in Education Programs or Activities</i> <i>Receiving Federal Financial Assistance</i> , 89 Fed. Reg. 33,474 (Apr. 29, 2024) .....	1
Order, <i>Carroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.</i> , No. 24-cv-00461 (N.D. Tex. May 15, 2025), Dkt. No. 154 .....	2
Order, <i>Tennessee v. Cardona</i> , 762 F. Supp. 3d 615 (E.D. Ky. 2025), <i>as amended</i> , (Jan. 10, 2025) (No. 24-cv-00072), Dkt. No. 185 .....	2

## INTRODUCTION

In response to this Court’s Order of August 5, 2025, the government respectfully submits this supplemental brief to address whether this appeal is moot “in light of the Eastern District of Kentucky’s final judgment vacating the 2024 Title IX regulations.” Order, Aug. 5, 2025. As set out below, this case is not moot because litigation remains pending concerning that judgment.

## BACKGROUND

Plaintiffs challenge a rule issued under Title IX of the Education Amendments of 1972. *See Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 89 Fed. Reg. 33,474 (Apr. 29, 2024). The district court denied a preliminary injunction, *see* Dkt. No. 58, plaintiffs appealed, and this Court heard oral argument on December 18, 2024. Proceedings in district court are stayed pending disposition of the appeal. *See* Dkt. No. 81. On January 9, 2025, a court in the Eastern District of Tennessee vacated the rule nationwide. *See Tennessee v. Cardona*, 762 F. Supp. 3d 615 (E.D. Ky. 2025), *as amended* (Jan. 10, 2025).

On February 5, 2025, the President issued Executive Order No. 14,201, *Keeping Men Out of Women’s Sports*, 90 Fed. Reg. 9279 (Feb. 11, 2025), which directs the Department of Education to “comply with the vacatur” of the Rule in the *Tennessee* litigation and otherwise “take other appropriate action to ensure this regulation does not have effect.” *Id.* at 9279. The government accordingly did not appeal the *Tennessee* vacatur order. Various other parties, however, moved to intervene (over the

Department's objection) for purposes of appeal. *See* Proposed Intervenor-Defendant A Better Balance's Motion to Intervene, *Tennessee*, 762 F. Supp. 3d 615 (No. 24-cv-00072), Dkt. No. 152; Proposed Intervenor-Defendants Victim Rights Law Center and Jane Doe's Motion to Intervene, *Tennessee*, 762 F. Supp. 3d 615 (No. 24-cv-00072), Dkt. No. 164. While the intervention motions were pending, each putative intervenor appealed the vacatur order. *See* [Proposed] Intervenor-Defendants' Notice of Appeal, *Tennessee*, 762 F. Supp. 3d 615 (No. 24-cv-00072), Dkt. No. 181; Notice of Appeal, *Tennessee*, 762 F. Supp. 3d 615 (No. 24-cv-00072), Dkt. No. 182. Four days later, after the appeal deadline passed, the district court denied the motions to intervene as moot. *See* Order, *Tennessee*, 762 F. Supp. 3d 615 (No. 24-cv-00072), Dkt. No. 185. The putative intervenors' appeals of the vacatur order are pending in the Sixth Circuit as case numbers 25-5205 and 25-5206; in each case, the putative intervenors have requested that the court of appeals remand for the district court to rule on their intervention motion on the merits.

Separately, on February 19, 2025, the rule was vacated nationwide in *Carroll Independent School District v. United States Department of Education*, No. 24-cv-00461, 2025 WL 1782572 (N.D. Tex. Feb. 19, 2025). Again, the Department did not appeal the decision, but parties sought to intervene over the government's objection to challenge the vacatur. The district court denied the intervention motions, and the putative intervenors appealed to challenge that decision. *See* Order, *Carroll Indep. Sch. Dist. v. U.S. Dep't of Educ.*, No. 24-cv-00461 (N.D. Tex. May 15, 2025), Dkt. No. 154;

[Proposed] Intervenor-Defendants’ Notice of Appeal, *Carroll Indep. Sch. Dist.*, No. 24-cv-00461 (May 21, 2025), Dkt. No. 155; Proposed Intervenor-Defendant A Better Balance’s Notice of Appeal, *Carroll Indep. Sch. Dist.*, No. 24-cv-00461 (May 21, 2025), Dkt. No. 156. The appeal remains pending. *See Carroll Indep. Sch. Dist. v. U.S. Dep’t of Educ.*, No. 25-10651 (5th Cir.).

## **ARGUMENT**

### **THE CASE IS NOT MOOT BECAUSE IT IS STILL POSSIBLE FOR THIS COURT TO GRANT EFFECTUAL RELIEF**

As set out above, the rule has been vacated by two district courts, and the government has not appealed those orders. But other parties are attempting to pursue appeals that could lead to reversal of the vacatur orders, at least in part. As a result, while the Department anticipates that this litigation will eventually become moot when the vacatur orders become final, at present and until such time as the putative intervenors’ appeals are exhausted, it is not “impossible” that this Court could grant plaintiffs “effectual relief,” *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (quotation marks omitted), by reversing the denial of a preliminary injunction. The case is accordingly not yet moot.

Should the Court wish to hold this case in abeyance until the case becomes moot, the government has no objection.

## CONCLUSION

At this time, this case is not moot.

Respectfully submitted,

BRETT A. SHUMATE

*Assistant Attorney General*

MELISSA N. PATTERSON

JACK E. STARCHER

DAVID L. PETERS

/s/ Steven A. Myers

STEVEN A. MYERS

*Attorneys, Appellate Staff*

*Civil Division, Room 7232*

*U.S. Department of Justice*

*950 Pennsylvania Avenue NW*

*Washington, DC 20530*

*(202) 305-8648*

*Steven.A.Myers@usdoj.gov*

AUGUST 2025



## **CERTIFICATE OF COMPLIANCE**

This brief complies with the page limit imposed by the Court's order of August 5, 2025, because it consists of fewer than four pages. It also complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it was prepared using Microsoft Word in Garamond 14-point font, a proportionally spaced typeface.

/s/ Steven A. Myers  
Steven A. Myers

## **CERTIFICATE OF SERVICE**

I hereby certify that on August 22, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Steven A. Myers  
Steven A. Myers